

Service Date: August 31, 2006

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

\* \* \* \* \*

IN THE MATTER OF MID-RIVERS	)	UTILITY DIVISION
TELEPHONE COOPERATIVE, INC.,	)	
Application for Designation as an	)	DOCKET NO. D2005.12.181
Eligible Telecommunications Carrier	)	
in the Lewistown, Montana, Exchange	)	ORDER NO. 6722a

**FINAL ORDER**

Introduction and Procedural Background

On December 29, 2005, Mid-Rivers Telephone Cooperative, Inc. (MRTC), filed with the Montana Public Service Commission (MTPSC) an application for designation as an eligible telecommunications carrier (ETC) in the non-rural local exchange area of Lewistown, Montana (Lewistown or Lewistown exchange). MRTC's application is supported by testimony and analysis asserting to establish a prima facie case for designation. MRTC requests expedited review and approval of its petition. MRTC has provided facilities-based "competitive exchange and exchange access" in Lewistown since September 2005. MRTC asserts that in addition to being able to offer such services to the majority of the residents in Lewistown, it is able to also provide services throughout the entirety of the area through the resale of Qwest's facilities.<sup>1</sup> As of December 2005 MRTC served about 500 access lines in the Lewistown exchange.<sup>2</sup> As Qwest is not a "rural telephone company," MRTC asserts that "the Act" (federal

---

<sup>1</sup> MRTC has an interconnection agreement with Qwest for Lewistown. *PSC Docket No. D97.2.19*. Pursuant to existing agreements, MRTC routes local traffic directly to wireless carriers via the local interconnection facilities of Qwest. Calls involving EAS will continue to be routed via Qwest. *DR PSC-004*.

<sup>2</sup> MRTC received a block of 10,000 numbers to serve the Lewistown exchange. *DR PSC-009(c)*.

Communications Act of 1934, as amended, including by the federal Telecommunications Act of 1996) requires the designation of more than one ETC. MRTC asserts that it meets the established criteria to be designated an ETC in Lewistown.

MRTC cites § 214(e) (1) (A) of the Act as the basic source of its obligation to provide services supported by federal universal service funds (FUSFs). In turn, the Federal Communications Commission (FCC) requires ETCs to provide the following nine supported services: access to voice-grade service; access to free-of-charge local usage (defined as an amount of minutes of use of exchange service); dual tone multi-frequency (DTMF) signaling or its equivalent; single-party service; toll limitation for qualifying low-income consumers; and access to emergency, operator, interexchange, and directory services. MRTC asserts to provide all nine supported services.

MRTC commits to meet additional requirements and advertise the availability of its services using media of general distribution. MRTC asserts to provide all “subject” services to a majority of the residents within the town of Lewistown. It does so by means of its own facilities and it can also serve customers throughout the exchange by reselling Qwest’s facilities where MRTC has not yet extended its own facilities. MRTC asserts to offer a local usage plan that is comparable to the one that Qwest offers. It will make the supported services available to customers that make a “reasonable request for service,” including low-income, low density, rural, insular, and high-cost customers, and in a manner reasonably comparable to similar services offered in urban areas.<sup>3</sup> MRTC maintains customer and technical support offices in Lewistown.

MRTC concludes that when the relevant factors are considered, its designation is clearly in the public interest (PI). MRTC is a “known entity” that has been designated an ETC six times. MRTC suggests it has therefore demonstrated its ability to provide the supported services. MRTC argues that its designation will result in greater competition in the Lewistown exchange, an exchange that can support a competitive ETC. MRTC asserts that its cost of providing service is a non-issue. MRTC adds that there should be no economic effect on Qwest that results from a second ETC designation, as Qwest will

---

<sup>3</sup> As for what is a “reasonable” request, MRTC adds that it will analyze requests using aid to construction, line extension, and security deposits. *DR PSC-006(e)*.

receive the same support in the exchange and the exchange is relatively small. MRTC claims that its technology platform<sup>4</sup> is compatible with broadband and advanced service offerings including high speed internet and broadband information services. MRTC states that its designation is in the PI as it will result in customers receiving more and better telecommunications services, greater reliability, and the impact on the FUSF is negligible. MRTC asserts to have provided in rural eastern Montana over 50 years of high-quality telecommunications services.

The procedural events in this docket are as follows. On February 3, 2006, the MTPSC issued a Notice of Application and Intervention Deadline. Petitions to intervene were received from the Montana Consumer Counsel (MCC) and the Montana Telecommunications Association (MTA). A procedural order was issued March 30, 2006, setting, among other important dates, a tentative August 17, 2006, hearing date. Data requests were served upon MRTC by MCC and MTPSC staff. On May 2, 2006, MRTC and MTA submitted a Stipulation and Agreement. MTA does not object to MRTC's application. On July 18, 2006, the MTPSC issued a Notice of Public Hearing. Publication of the notice was withdrawn when the MTPSC learned that no party to the proceeding intended to oppose the application. On July 21, 2006, the MTPSC replaced the Notice of Public Hearing with a Notice of Opportunity for Public Hearing. As of August 15, 2006, the deadline for requests for hearing, the MTPSC had not received any request.

#### MRTC Testimony of Mr. Gerry Anderson

The only party to submit testimony was MRTC. MRTC submitted on December 29, 2005, the "Prefiled Testimony and Supporting Analysis Establishing Prima Facie Case" of Mr. Gerry Anderson. The purpose of Anderson's testimony is to affirm the facts in MRTC's application. He describes MRTC's overall operations to include 10,000 route miles of telephone lines, 2000 miles of fiber optic cable, and 24,000 access lines spread over about 30,000 square miles in twenty-one Montana counties and three North Dakota counties. MRTC provides competitive local exchange service as part of its co-op

---

<sup>4</sup> The platform uses coaxial, copper, and fiber cable. *DR PSC-002(c)*.

operations. He lists each docket and the exchanges for which MRTC was previously designated an ETC. He also lists the nine criteria and other requirements that MRTC must satisfy.

Anderson asserts that MRTC satisfies the criteria in § 214(e) (1) (A) of the Act and in the FCC's regulations (*e.g.*, 47 C.F.R. §§ 54.101(a) (1) and 54.201(d) (2)). He states that MRTC provides the "subject" services to the majority of Lewistown's residents by means of its own facilities. He adds that MRTC can also serve customers by means of reselling Qwest facilities. He further adds that MRTC meets the criteria in the MTPSC's ETC rules (*ARM 38.5.3201 through 38.5.3230*) by providing services in Lewistown to all customers that make reasonable service requests, including low-income,<sup>5</sup> low density, rural, insular, and high cost customers in a manner reasonably comparable to similar services offered in urban areas. MRTC will offer a local usage plan that is comparable to Qwest's.<sup>6</sup> MRTC will maintain customer and technical support in Lewistown. MRTC has been designated an ETC six times and MRTC's designation will enhance competition. MRTC asserts that there should be no affect on Qwest. MRTC will provide service throughout the entire area through resale of Qwest's facilities.<sup>7</sup> MRTC's designation is in accord with the principles of universal service because it will result in more and better telecommunications services, greater reliability and increased public safety, and the impact on the FUSF will be negligible.<sup>8</sup> Anderson

---

<sup>5</sup> MRTC provides Lifeline service at the \$18/month residential local exchange rate less a \$13.50 discount. Link-up is provided at a \$12.50 discount to the \$25 connection fee. *DR PSC-001(d)*.

<sup>6</sup> The rates at which MRTC will offer residential (\$18/month) and business (\$38/month) appear to be the highest rates in MRTC's study area. *DR PSC-005(c)*. MRTC does not offer measured service and has no plans to offer VoIP in the Lewistown exchange. *DR PSC-006(c) and (d)*.

<sup>7</sup> As for "build out" plans, MRTC only noted that it will continue to construct facilities but because of the exchange size it may take several years to complete. *DR PSC-007(b)*. MRTC is unaware of any carrier of last resort obligations in Montana. *DR PSC-008(e)*.

<sup>8</sup> MRTC will receive the same amount per line as the incumbent local exchange carrier ETC and once designated it expects to receive: \$8.47/line/month in High Cost Model Support, Interstate Access Support of between \$.6753 (zone 3) and \$1.076 (zone 4) for each line, Lifeline support of \$10/month/line and Link-up support in the amount of

states MRTC commits to use any FUSFs that MRTC receives for the purposes set forth in § 254(e) of the Act.

MRTC also explained the basis of patronage credits, their tax implications, and the relevance to the receipt of FUSFs (*see, DR PSC-010*). The credits are based on capital furnished by the co-op's members. Such credits are separate from dividends. As a taxable co-op, MRTC receives a tax deduction for distributions.

### Commission Findings

#### General

The MTPSC finds that MRTC has sufficiently satisfied the requirements set forth in §214 of the Act, including the public interest (PI) standard, to be designated as an ETC in the Lewistown exchange. MRTC's ongoing compliance with the additional conditions set forth in this order is required. In this regard, the MTPSC's evaluation of MRTC's compliance will, as is appropriate, be consistent with recent MTPSC orders designating ETCs and the MTPSC's rules governing ETCs (*ARM 38.5.3201 through 38.5.3230*). There is, however, the potential for unique aspects with each ETC petition, aspects that may require unique MTPSC findings.

#### Public Interest

In order for its designation to be in the PI the MTPSC must determine that MRTC complies with both the requirements set forth in § 214 of the Act and with any additional requirements that the MTPSC has established either in its rules, previous orders, and this order. Given that no party contests MRTC's application, in this order the MTPSC will consider the standards that were established in the MTPSC's next previous ETC-designation final order, *Matter of Range Telephone Cooperative, PSC Docket No. D2004.3.38, Order No.6705a, March 23, 2006*. The FCC's recent March 17, 2005, Report and Order (*FCC 05-46, CC 96-45*) adopted mandatory minimum requirements for

---

\$12.50/connection. *DR PSC-001(e)*.

MRTC asserts that no matter how many lines Qwest loses to MRTC there will be no affect on the amount that Qwest receives on a per line basis. MRTC did not respond to the aspect of the data request that inquired about the economic impact on Qwest's total

ETC designations that are subject to § 214(e)(6) proceedings. These requirements are, however, optional recommendations that the FCC urged states to adopt. Many of the MTPSC's ETC rule requirements are also contained within the FCC's recent minimum requirements.

Besides satisfying the minimal requirements in § 214, it appears to the MTPSC that a PI benefit is that there are now two suppliers of landline services in Lewistown. While a duopoly structure is not a competitive market, if there were benefits from such an outcome, they may be manifest, in part, in better service quality and lower prices.

#### Designated Study Areas and Service Coverage

As MRTC has the means to serve customers in Lewistown, either on a facility basis, by means of unbundled network elements or via resell, there appears no apparent concern about MRTC's ability to serve any or all lines in the Lewistown exchange. Therefore, MRTC need not initially serve all customers by its own means in the entire Lewistown wire center. If MRTC intends to change the means by which it serves customers, to use for example internet telephony and in turn seek FUSFs, it must first advise the MTPSC of its intent.

The MTPSC finds that MRTC must by means of its own resources serve all reasonable requests for wireline service at residences and businesses in each wire center. MRTC may choose the means by which it fulfills this obligation but it shall be in the first instance MRTC's responsibility.

#### Build out Plans

The MTPSC requires MRTC to file information that explains its build out plans. An initial report of those plans must be filed within sixty days of the issuance of this Final Order. At six month intervals MRTC is to file reports on its progress in expanding its coverage.

#### Section 214(e) (1) supported Services: Voice Grade Access

---

FUSF receipts for that exchange. *DR PS -007(a)*.

One of the nine supported services requires ETCs to provide voice grade access including at least 300 to 3,000 Hertz bandwidth (*FCC rule, 47 C.F.R. § 54.101(a) (1)*). The MTPSC expects, as required by the FCC's rules, that MRTC's service will at least span the 300 to 3000 Hertz bandwidth and that the service quality for transmission will be at least -104dBm.

#### Use of Federal Universal Service Funds

Although the MTPSC does not otherwise regulate MRTC, how MRTC uses FUSFs is controlled by statute, principally §254(e). The annual certification process involves the MTPSC in fund-usage matters, as will any MTPSC investigation into how such funds are used.<sup>9</sup> Whereas the MTPSC has relied on a self-certification mechanism, if and when this approach appears inadequate for a specific carrier, the MTPSC will then consider a more in depth review.

#### Fund Size

The MTPSC is concerned about the size of the FUSF. The FCC has also expressed heightened concern about the size and growth of the FUSF.<sup>10</sup> There is a real risk that if the FUSF size continues along its recent growth path, legislation could be enacted to limit the fund's size. Any such legislation could damage the ability of carriers to operate, maintain, and expand networks that serve to achieve the universal service principles set forth in §254(b). Because MRTC's service offerings are, however, most

---

<sup>9</sup> *ARM 38.5.3216*. Also, § 254(e) of the Telecommunications Act of 1996 states, in relevant part: "A carrier that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Any such support should be explicit and sufficient to achieve the purposes of this section."

<sup>10</sup> In its Virginia Cellular Order (*FCC 03-338, CC Docket No. 96-45, Released January 22, 2004*) the FCC asserted: "Although we find that grant of this ETC designation will not dramatically burden the universal service fund, we are increasingly concerned about the impact on the universal service fund due to the rapid growth in high-cost support distributed to competitive ETCs... We note that the outcome of the Commission's pending proceeding examining the rules relating to high-cost support in competitive areas could potentially impact, among other things, the support that Virginia Cellular and other competitive ETCs may receive in the future." (Paragraph 31, emphasis added).

surely substitutes for, and not complements to, Qwest's services, there should be a negligible impact on the FUSF. MRTC will receive, as a competitive ETC and not as an incumbent, support based on the FCC's high cost estimates for the incumbent and not upon the costs that MRTC incurs for its own study area.

#### Service Quality Monitoring

The MTPSC will monitor MRTC's ability to provide service in Lewistown. MRTC must report to the MTPSC the requests for service that it is unable to satisfy. MRTC must report the number of unsatisfied requests regardless of how those requests were communicated (*e.g.*, voice, email, letter, etc.). The MTPSC requires that these reports detail the unsatisfied service requests by location in Lewistown and the reports must provide a detailed description of why any customer request for service was not satisfied. MRTC must file such reports on a quarterly basis for as long as MRTC is designated an ETC. MRTC must also document and report to the MTPSC on the customer complaints that it receives. MRTC must record the complaints that it received from customers, identify the nature of the complaint (*e.g.*, poor transmission, dropped calls, busy signals), and identify the remedy employed to address each complaint. Based upon these records it must be possible to map the complaints to addresses. If repeat complaints are received, then a record of such repeat complaints must be maintained. The reports must be supplied to the MTPSC on a quarterly basis.

#### Federal Universal Service Fund Receipts

The MTPSC finds that, in conjunction with being designated as an ETC, MRTC must report to the MTPSC the FUSFs, including any Lifeline, Enhanced Lifeline, and Link Up funds that it receives. These reports must also disaggregate the amount of other portable support that MRTC receives (*i.e.*, high cost loop, local switching, etc.). The reports must be filed quarterly.

#### Service Package

As long as MRTC is designated an ETC it must have on file with the MTPSC a

---

copy of each rate plan that it offers for which it may receive FUSF support. Each plan must include the rates, terms, and conditions of service.

#### Conclusions of Law

The MTPSC has jurisdiction over applications for designation as an eligible telecommunications carrier in Montana. *47 U.S.C. § 214(e) (2); § 69-8-840, MCA*. The MTPSC has considered all laws, federal and state, applicable to state-designation of ETCs for receipt of federal USFs. The MTPSC determines that MRTC has met the legal requirements for designation.

#### ORDER

It is hereby ordered that Mid-Rivers Telephone Cooperative, Inc.'s, application for designation as an eligible telecommunications carrier in the Lewistown exchange is granted, subject to the terms and conditions included in this order.

Done and dated this 22nd day of August, 2006, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

---

GREG JERGESON, Chairman

---

BRAD MOLNAR, Vice-Chairman

---

DOUG MOOD, Commissioner

---

ROBERT H. RANEY, Commissioner

---

THOMAS J. SCHNEIDER, Commissioner

ATTEST:

Connie Jones  
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. *See, ARM 38.2.4806.*